

Papez Discusses Pending Supreme Court Ruling in *Sackett v. EPA*

JANUARY 25, 2012

On January 25, 2012, [Elizabeth Papez](#), a partner in Winston & Strawn's nationwide appellate and critical motions practice, delivered a [Federalist Society SCOTUScast](#) on the issues and recent U.S. Supreme Court argument in *Sackett v. Environmental Protection Agency (EPA)*.

The case arises out of an attempt by Idaho couple Michael and Chantell Sackett to challenge an EPA compliance order that declared their residential property a protected wetland and threatened them with more than \$37,000 per day in penalties if they continued to build their family home. Because the Sacketts did not believe their property qualified as a wetland subject to EPA regulation under the Clean Water Act, they asked EPA to reconsider the order. EPA refused to give them a hearing, and won a motion to dismiss the federal lawsuit they subsequently filed in an effort to obtain review of the compliance order. The Court of Appeals affirmed the dismissal, leaving the Sacketts unable to develop the property, unable to sell it free of the compliance restrictions, and subject to potentially millions of dollars in fines if they violated the order in an attempt to trigger an EPA-initiated enforcement action in federal court.

The question before the Supreme Court is whether and, if so, under what circumstances property owners like the Sacketts can obtain direct judicial review of an Agency compliance order that severely impairs their property rights. The case is significant for anyone whose personal or business activities fall within EPA's broad statutory jurisdiction, and particularly for any entity that participates in what the Supreme Court briefs estimate to be the \$1.7 billion annual compliance and permitting regime at issue in the case. During the webcast, Papez observed that the decision may also have broader significance for "anyone who deals with regulatory agencies more generally." The reason is that the Supreme Court precedents that govern the case are "not confined to the environmental context," but arise in many other areas of federal regulation. As Papez noted, the same precedents governed a recent D.C. Circuit appeal in which Winston & Strawn successfully represented a healthcare client in overcoming the Government's objections to direct judicial review of the client's challenges to certain Medicare regulations.

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